

REMARKS

Amendment K is hereby provided after careful consideration of the Examiner's comments set forth in the Office Action mailed June 16, 2009. Claims 2, 3, 5-9, and 11-22 remain in the application and claim 23 is added after Amendment K is entered. Reconsideration of the application is respectfully requested in view of the amendments and remarks provided herein.

The Office Action

Claims 2 and 16 stand rejected under 35 U.S.C. § 102(e) for allegedly being anticipated by U.S. Patent Application Publication No. 2005/0054296 to Chuang et al.

Claims 7 and 17-20 stand rejected under 35 U.S.C. § 103(a) for allegedly being obvious over Chuang and the Examiner's allegation that certain features are either inherently disclosed in Chuang or well known in the art (i.e., Examiner's Notice).

Claim 3 is identified as dependent claims that would be allowable if placed in independent form including all of the limitations of the base claim and any intervening claims even though claim 3 is actually an independent claim.

Claims 5, 6, 8-10, and 22 are identified as dependent claims that would be allowable if placed in independent form including all of the limitations of the base claim and any intervening claims.

Claims 11-15 are allowed.

The Applicant notes that the Office Action does not mention claim 21 which depends from claim 3. Since claim 3 is allowable, claim 21 is presumed to be allowable.

The Art Rejections

Claims 2 and 16 Patentably Distinguish Over Chuang.

Claim 10 was identified as a dependent claim that would be allowable if combined with all of the limitations of the corresponding base claim and any intervening claims. Claim 10 previously depended from independent claim 2. As amended, claim 2 incorporates all of the limitations of claim 10. Claim 2 is also amended to remove the

limitation “wherein the desired MCS error rate for the first MCS level is based on a block error rate target criterion” because retaining this limitation would not be consistent with the limitations added from claim 10. The “wherein” clause removed from claim 2 is presented in new dependent claim 23.

Based at least on the foregoing, it is submitted that claim 2 is patentably distinguished from Chuang. Accordingly, the Applicant respectfully submits that independent claim 2 and claims dependent thereon (e.g., claim 16) are currently in condition for allowance.

Claims 7 and 17-20 Patentably Distinguish Over the Combination of Chuang and Examiner’s Official Notice.

Claims 7 and 17-20 depend from independent claim 2 or intervening claims. Accordingly, claims 7 and 17-20 are patentably distinct from Chuang and Examiner’s Official Notice for at least the same reasons provided above distinguishing claim 2 from Chuang. Based at least on the foregoing, the Applicant respectfully submits that claims 7 and 17-20 are currently in condition for allowance.

The Allowable Subject Matter

Claim 3 is an Independent Claim.

Claim 3 was identified as a dependent claim that would be allowable if it is combined with all of the limitations of its base claim and any intervening claims. However, claim 3 is an independent claim after having been placed in independent form in Amendment I filed November 21, 2008. Accordingly, the Applicant respectfully submits that independent claim 3 and claims dependent thereon (e.g., claims 21 and 22) are currently in condition for allowance without further amendment.

CONCLUSION

For the reasons detailed above, it is respectfully submitted all claims remaining in the application (Claims 2, 3, 5-9, and 11-23) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to telephone Alan C. Brandt, at (216) 363-9000.

Respectfully submitted,

Fay Sharpe LLP

September 16, 2009

Date

A handwritten signature in dark ink, appearing to read "Alan C. Brandt", is written over a horizontal line.

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